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February 16, 2021

VIA ECF

Hon. Andrew L. Carter, Jr.
U.S. District Court, S.D.N.Y.
40 Foley Square, Room 435
New York, New York 10007

Re: *In Re Sundial Growers Inc. Securities Litigation*, Civil Action 1:19-cv-08913-ALC
(Related Case No. 1:20-cv-03579-ALC)

Dear Judge Carter:

We write on behalf of all defendants to bring to the Court's attention the decision issued on February 16, 2021 by the Appellate Division of the Supreme Court of the State of New York, First Department, in the case captioned *In the Matter of Sundial Growers, Inc. Securities Litigation*, No. 2020-02704 (N.Y. App. Div. Feb. 16, 2021) (attached hereto as Exhibit A), in connection with and in further support of defendants' Joint Motion to Dismiss the Second Amended Consolidated Complaint (ECF No. 69). The decision of the Appellate Division unanimously affirmed the dismissal of a parallel putative class action addressed in defendants' memorandum of law (ECF No. 70) and reply memorandum of law (ECF No. 74) in support of defendants' motion.¹

Respectfully submitted,

/s/ Adam S. Hakki

Adam S. Hakki

Enclosure

cc: Counsel of Record (via ECF)

¹ We represent defendant Sundial Growers Inc. and the individual defendants Torsten Kuenzlen, James Keough, Edward Hellard, Greg Mills, Gregory Turnbull, Lee Tamkee, and Elizabeth Cannon. The underwriter defendants, which are separately represented, consist of Cowen and Company, LLC, BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., Barclays Capital Canada Inc., CIBC World Markets Inc., and Scotia Capital Inc.

Exhibit A

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Supreme Court of the State of New York**Appellate Division, First Judicial Department**

Manzanet-Daniels, J.P., Webber, Oing, Kennedy, JJ.

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In the Matter of SUNDIAL GROWERS, INC.
SECURITIES LITIGATIONIndex No. 655178/19
Case No. 2020-02704TRISHA PETERS, et al.,
Plaintiffs-Appellants,

-against-

SUNDIAL GROWERS, INC., et al.,
Defendants-Respondents.

Kaplan Fox & Kilsheimer LLP, New York (Robert N. Kaplan of counsel), for appellants.

Shearman & Sterling LLP, New York (Adam S. Hakki of counsel), for respondents.

Order, Supreme Court, New York County (Barry R. Ostrager, J.), entered May 15, 2020, which granted defendants' motion to dismiss the complaint, unanimously affirmed, with costs.

The statements in the offering materials that defendant Sundial Growers, Inc. produced "high quality" and "premium" cannabis were non-actionable puffery (*Ong v Chipotle Mexican Grill, Inc.*, 294 F Supp 3d 199, 232 [SD NY 2018]).

To the extent the statements were more than puffery, they were non-actionable opinion (*Abramson v Newlink Genetics Corp.*, 965 F3d 165, 173 [2d Cir 2020]).

Moreover, the risk disclosures in the offering materials expressly and repeatedly warned of the risk to the company's quality control, including fire, insects, and contamination, and noted that there had been such an incident in the past. In light of

this, the disclosures were not misleading for not identifying a single incident of returned product, that constituted 10% of the company's sales for a single quarter (*see Jianming Lyu v Ruhnn Holdings Ltd.*, 189 AD3d 441 [1st Dept 2020]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: February 16, 2021



Susanna Molina Rojas
Clerk of the Court